

## **Board of Chiropractic Examiners (BCE)**

### **INITIAL STATEMENT OF REASONS**

**Hearing Date:** None

**Subject Matter of Proposed Regulations:** Omnibus Consumer Protection Regulations

**Sections Affected:**

The proposed regulations would amend sections 303, 304, 306.3 and 308, which are contained in Article 1 in Division 4 of Title 16 of the California Code of Regulations (CCR), and amend sections 312 and 314, which are contained in Article 2 in Division 4 of Title 16 of the CCR. Furthermore, the proposed regulations would add sections 317.2 and 317.3, which are contained in Article 2 in Division 4 of Title 16 of the CCR, add section 321.1, which is contained in Article 3 in Division 4 of Title 16 of the CCR, and add sections 384.1, 390.7 and 390.8, which are contained in Article 9 in Division 4 of Title 16 of the CCR.

**Introduction:**

Business and Professions Code (BPC) section 1000 – 4(b), (Chiropractic Initiative Act of California Stats. 1923p.1xxxviii), hereinafter Initiative Act, authorizes the Board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

In July of 2009, a series of articles appeared in the Los Angeles Times newspaper pointing out consumer protection issues and findings of egregious licensee misconduct at a specific healing arts licensing board within the Department of Consumer Affairs (DCA). The articles addressed systemic problems with the manner in which the targeted DCA board managed complaints, investigations, disciplinary actions, and probation monitoring.

Based on these findings, the Board of Chiropractic Examiners (BCE) held a series of meetings to review its existing enforcement processes for potential similar problems and brainstorm solutions and goals for improvement within the BCE. This review uncovered some similar concerns due to legal, procedural, and inadequate resources that limit the BCE's ability to investigate and act on cases in a timely manner and identified areas that could be improved for closer alignment with the BCE's consumer protection mandate.

This proposal would make regulatory changes to enhance the BCE's enforcement and administrative processes by defining terms in regulation, establishing reporting and disclosure requirements, and amending regulations specific to its disciplinary guidelines, applicant requirements and enforcement. These changes would increase the BCE's enforcement authority and access to critical information for use in investigations and improve efficiency in enforcement processes and procedures for enhanced consumer protection.

## **Specific Purpose and Factual Basis of each adoption, amendment, or repeal:**

**Section 303 is amended:** CCR section 303 would be amended and broken down into three subdivisions and unnecessary verbiage would be removed for clarity.

Proposed subdivision (a) would be amended to require each person holding a license to file a proper and current physical practice address and, when applicable, a satellite address, with the BCE. This subdivision would further require licensees who do not have a practice address, to file their proper and current residence address with the BCE. Lastly, this subdivision would disclose that the address provided pursuant to this subdivision shall be public information unless the licensee submits an alternate address pursuant to subdivision (b).

Factual Basis/Rationale: Currently, licensees are required to provide the BCE with the address of their principal office and, where appropriate, each and every sub-office, also known as a satellite office. Licensees who are not engaged in the practice of chiropractic, such as new licensees and inactive licensees, cannot comply with this requirement. Further, many chiropractic offices, such as those in rural areas or strip malls without mail receptacles, currently provide post office boxes as their business address. This creates needless delays for the BCE's enforcement program during investigation of consumer complaints and probation monitoring when an investigator cannot locate the licensee for unannounced face to face interviews. Finally, BPC section 27, which prescribes internet disclosure by entities under the auspice of DCA, was recently amended by SB 706 (Price) to include the BCE. Although the BCE was not previously included in the internet public disclosure requirements provided in BPC section 27, the BCE's internet disclosure policy followed the same standards as those required of DCA due to utilization of the same database. The internet disclosure requirements in current regulation are less prescriptive than the requirements in BPC section 27 and should be amended for consistency with the law.

Subdivision (b) would provide licensees with the option to, in addition to the address filed pursuant to subdivision (a), designate an address of record that shall be public information, which may consist of a post office box number or other viable mailing address.

Factual Basis/Rationale: Not all physical practice addresses, as required in subdivision (a), are viable mailing addresses. Furthermore, BPC section 27 requires that the board allow licensees to use a post office box or other alternate address as their address of record that is disclosed to the public. This proposal is necessary to ensure effective communication with licensees while preserving their privacy.

Subdivision (c) would require licensees to report each and every change of address either in writing or by fax within 30 days after each change, giving both the old and new addresses to the BCE. This subdivision would require a change of address to be submitted in writing and mailed or faxed to the BCE at its office in Sacramento.

Factual Basis/Rationale: This proposed requirement is similar to that in current regulation; however, the word "immediately" was stricken as it conflicts with the 30-day time frame allowed for submission of address changes to the BCE. The manner in which to comply with this requirement was also added to this subdivision and is

necessary to ensure that the BCE receives written documentation of address changes that can be stored in the licensee's file as evidence of changes requested on the licensee's record. This requirement is necessary to ensure that the BCE has accurate information on their licensees for effective administration of its enforcement program and communication with licensees.

**Section 304 is amended:**

This section sets forth grounds for disciplinary action of a license or denial of a chiropractic license for revocation, suspension, or other discipline by another state of a license or certificate to practice chiropractic, or any other health care profession for which a license or certificate is required.

The proposed amendment would add subdivision (a) to expand the grounds for disciplinary action of a license to include any disciplinary action taken against a licensee by another licensing entity or authority of an agency of the federal government, or province thereof, or the United States Military, or a foreign government, or any other jurisdiction and establish disciplinary action based on these grounds as unprofessional conduct.

In addition, this proposal would add subdivision (b) to define disciplinary action as any revocation, suspension, probation, or reprimand of a professional license.

Factual Basis/Rationale: Current regulation allows the BCE to consider the revocation, suspension or other discipline by another state of a license or certificate to practice chiropractic, or any other health care profession for which a license or certificate is required, as grounds for disciplinary action against a chiropractic license or grounds for denial of chiropractic licensure of an applicant. These amendments would expand the grounds of prior discipline to jurisdictions outside the United States and allow the BCE to take action against a licensee or applicant on the grounds of prior discipline rather than the underlying violation which resulted in prior discipline by another jurisdiction, thereby circumventing the lengthy process of building a case based on circumstances surrounding the violation which has already been investigated and supported by evidence. The addition of subdivision (b) is needed to clarify the types of actions against a license that the BCE would consider as discipline of a license.

**Section 306.3 is amended:**

This section asserts the BCE's authority to inspect the premises of any chiropractic office during regular business hours. This proposal would amend the section to establish a consequence of unprofessional conduct, which may subject the licensee to discipline.

Factual Basis/Rationale: This amendment would impose a penalty for licensees who obstruct the board's inspection efforts thereby thwarting the BCE's mission of consumer protection. This amendment is necessary to expedite the investigation of complaints and provide greater access to chiropractic facilities for routine inspections for increased public protection.

**Section 308 is amended:**

Subdivision (a) requires licensees to display a current active license in a conspicuous place in the licensee's principal office or primary place of practice. This proposal would amend this section for clarity and specify that licensees must prominently display their current active license in the entry area or waiting area of their principal place of business.

A minor amendment is proposed in subdivisions (b), (c) and (e) to change "Doctor of Chiropractic" to "doctor of chiropractic" for consistency with other regulations. Subdivision (c) requires licensees to display a current active Satellite Office Certificate in a conspicuous place at the office for which it was issued. This proposal would clarify that the Satellite Office Certificate must be prominently displayed in the entry area or waiting area of the office for which it was issued at all times while treating, examining or evaluating patients at that location.

The proposed amendments would add subdivision (d) to address the type of license and license posting requirements for chiropractors who practice in a mobile setting. Specifically, this subdivision would exempt chiropractors who practice in a mobile setting (i.e. health fairs, sporting events, patient's homes) from the requirement of obtaining and displaying a satellite certificate and instead require the chiropractor to carry a current and active pocket license and have the pocket license available for inspection upon request of a representative of the BCE or a member of the public.

This proposal would add subdivision (e) which prohibits a licensed doctor of chiropractic from displaying an inactive or invalid chiropractic license, certificate or registration. Subdivision (e) was added to this paragraph for consistency with the changes in enumeration; however, there were no substantive changes to the text of this paragraph.

Factual Basis/Rationale: The current regulation is subjective and does not provide clear instruction on whose license must be displayed and where the license must be displayed while providing chiropractic services. This change is necessary to ensure that the public and BCE investigators can easily ascertain whether the chiropractor is properly licensed in order to protect the public.

### **Section 312 is amended:**

This section would rename, reorganize, and revise the content for clarity and consistency with other regulations governing the BCE.

Currently, this section is titled, "Illegal Practice". The BCE believes that the title "Illegal Practice" is contrary to the content of this section which describes the activities permitted by an unlicensed person in a chiropractic office and the level of supervision required, rather than only activities which are not permitted or considered illegal by an unlicensed person. The title of this section would be amended to, "Supervision of Unlicensed Individuals".

Additionally, all references to "licensed doctor" would be changed to "licensed doctor of chiropractic" for uniformity in the regulations.

The first sentence in the first paragraph beginning with, “Unlicensed individuals...” would be moved to proposed subdivision (b)(1)(D)(2) which outlines procedures prohibited by unlicensed individuals, making the definition of an unlicensed individual the first sentence of the amended regulation. This change is necessary for clarity and consistency with the amended format of this regulation.

The proposed second paragraph is currently located in subdivision (c)(2) and would be moved toward the top of this section to clarify the responsibilities of the chiropractor prior to releasing the patient to the unlicensed individual for treatment. This amendment is necessary to clarify the roles of the licensed doctor of chiropractic and the unlicensed individual to ensure patient safety.

Subdivision (a) would be moved up one line from the existing text, beginning with, “The permitted activities...”, to correspond with the enumeration changes within this section.

Current subdivision “(a)” would be renumbered to paragraph (1) for consistency with the changes in enumeration. Additionally, the second line, beginning with, “However, this activity is separate...” would be deleted, as the proposed second paragraph described above would require the licensed doctor of chiropractic to initially examine and prepare a written treatment plan prior to the provision of physiotherapy, making this sentence duplicative. This paragraph would specify that the licensed doctor of chiropractic must confirm the history with the patient and determine all appropriate evaluations, imaging, examinations and referrals. This change is needed to ensure that the chiropractor and patient engage in a comprehensive dialogue regarding the patient’s ailment(s) and treatment plan prior to the provision of chiropractic care. This step will also ensure that the chiropractor has a complete understanding of the patient’s health and the patient has an opportunity to make informed decisions regarding the proposed care prior to receiving physiotherapy treatment by an unlicensed individual. These changes are necessary for protection of chiropractic patients.

Current subdivision “(b)” would be renumbered to paragraph (2) for consistency with the changes in enumeration. Additionally, proposed changes to this paragraph would specify the parameters and level of supervision of unlicensed individuals conducting evaluations. Specifically, the phrase, “at the direction of the licensed doctor of chiropractic”, would be added to the first sentence following, “chiropractic examinations” to clearly reassert the chiropractor’s responsibility for performing the initial examination and developing a treatment plan, as proposed in the second paragraph in this section, prior to referring a patient to the care of an unlicensed individual. In the first sentence, the phrase, “except they may not perform such examinations which require diagnostic or analytic interpretations nor may they”, would be deleted and a new sentence would be created beginning with, “Unlicensed individuals may not render...”; the phrase, “to a patient”, would be added following the phrase, “or in writing”; and the word, “physical”, would be deleted. These changes clarify the parameters that an unlicensed individual must work within to ensure that only a licensed chiropractor who is educated and trained in diagnosing and interpreting examinations would engage in communication regarding the findings to a patient in order to reduce the risk of harm to the public caused by unlicensed individuals exceeding their scope of duties. The sentence beginning with, “As an example,” would be deleted because changes proposed above clearly define the

limitations of examinations for unlicensed individuals, making this sentence duplicative. Lastly, the phrase, “immediate and”, in the last sentence, would be removed for uniformity with the language in section 302.5, Use of Laser. These changes are necessary for clarity and consistency.

The proposed second paragraph would contain the definition of direct supervision. The phrase, “Immediate and” would be removed from the beginning of the first sentence for uniformity with the phrase, “direct supervision”, contained in the previous paragraph and Section 302.5 Use of Laser. This proposal would delete the phrase, “on the premises”, and add, “present in the same chiropractic facility”, in the first sentence. These changes are necessary for clarity and consistency with the BCE’s regulations.

Subdivision (c) would be renamed paragraph (3) for uniformity with the changes in enumeration to this section. Additionally, all references to physical therapy would be replaced with the term, “physiotherapy” to prevent any possible misrepresentation to consumers that the unlicensed person is a physical therapist, licensed by the Physical Therapy Board of California. This proposal would change all references of “adequate supervision” to “indirect supervision” for clarity and consistency with the terms referred to in section 302.5 Use of Laser. These changes are necessary for clarity and consistency within the BCE’s regulations.

The proposed second paragraph would contain the definition of indirect supervision. The proposed amendments would slightly amend the verbiage and format of this paragraph by adding the word, “means” and deleting the phrase, “shall include all of the following”, following the word “supervision” for conformity with the format of direct supervision contained in subdivision (a)(2). All other proposed changes to the text of this paragraph (licensed doctor of chiropractic) were described above and are necessary for consistency with the proposed changes throughout this regulation.

Paragraph 3 would be deleted due to a conflict with the Division of Workers' Compensation, Title 8 regulations. Currently, paragraph 3 requires all doctors of chiropractic to reevaluate a patient’s treatment program and the supervised unlicensed individual’s performance in relation to a patient’s treatment at least once every thirty (30) days the patient is under active care. However, California Code of Regulations, Title 8, chapter 4.5, subchapter 1, Section 9785(f)(8) requires doctors of chiropractic who are providing continuing treatment to workers’ compensation patients to prepare a progress report no later than forty-five (45) days from the last required report, even if an event described in Section 9785 does not occur. By deleting paragraph 3, doctors of chiropractic who provide continuing treatment to patients would not be required to reevaluate a patient’s treatment program every 30 days, but those who provide continuing treatment to workers compensation patients would continue to be required to prepare a progress report every 45 days from the last workers’ compensation report.

Factual Basis/Rationale: This change is necessary to resolve the conflict between paragraph 3 and section 9785(f)(8) of the Division of Workers' Compensation, Title 8 regulations.

This proposal would delete paragraph 4. Currently, this paragraph requires the doctor of chiropractic to perform and record an evaluation of the patient and his or her response to treatment at the termination thereof. This paragraph should be deleted because patients who decide to terminate their treatment and choose not return to the chiropractor for an evaluation at the time of termination subject the licensee to a violation of the regulations for a matter which is outside their control.

Subdivision (d) would be changed to (a)(4) due to the enumeration changes in this section. This subdivision addresses the role of the unlicensed individual with regard to X-ray films. The following sentences would be added to the beginning of this subdivision, "The licensed doctor of chiropractic is responsible for evaluating a radiographic image before any markings are added that obstruct portions of a body part. The licensed doctor of chiropractic may refer the evaluation of radiographic images to a radiologist. Following the licensed doctor of chiropractic's review of the radiograph, the unlicensed individual..." Further, "administered" would be replaced with "generated" for accuracy. The BCE felt it necessary to add this as a preface to this paragraph to ensure that the examination and reading of unmarked radiographs are performed by a trained professional and prevent misdiagnoses in patients.

Subdivision (e) would be changed to subdivision (b) due to changes in enumeration. Additionally, the word, "administer", would be deleted and the word, "not", would be followed by a colon. The rest of the paragraph would be moved down to create paragraph (b)(1). These changes are necessary for consistency with the enumeration and format changes proposed in this section.

Proposed paragraph (b)(1) would be changed by adding the word, "Generate", to the beginning of the first sentence in this paragraph for consistency with paragraph (a)(4). Further, the first line would be modified to reflect the current name of the department which issues the x-ray certificates as "the Department of Public Health, Radiologic Health Branch." Lastly, "Doctor of Chiropractic" would be changed to lower case for consistency with other regulations and "in a" would be replaced with "as part of a". These changes are necessary for clarity and consistency with the other proposed changes to this section.

Paragraphs (e)(1) through (e)(4) would be changed to subparagraphs (b)(1)(A) through (D) for consistency with the enumeration changes in this section. The phrase, "to generate a radiographic beam" would be added to the end of proposed subparagraph (C) to clarify the intent of this subparagraph. The second sentence of subparagraph (D) would be changed to begin with, "However," and the Department of Health Services would be changed to its current name, Department of Public Health, Radiologic Health Branch, for clarity and consistency with the rest of this regulation.

This proposal would move the first sentence in the first paragraph of Section 312, beginning with, "Unlicensed individuals are not permitted..." to proposed subdivision (b)(1)(D)(2) which outlines procedures prohibited by unlicensed individuals. A second sentence would be added, "All preceptors must be under the direct supervision of licensed doctor of chiropractic." These changes are necessary to separate the permitted activities from the unpermitted activities of an unlicensed individual for clarity and consistency with the amended format of this section and identify the level of supervision for preceptors in order to protect the public.

The last paragraph in the current regulation, beginning with, “Unlicensed individuals who exceed”, would be identified as subdivision (c) with no changes to the text for consistency with the enumeration changes in this section.

Lastly, subdivision (d) would be added which would authorize the board to consider violations of this section as unprofessional conduct that may subject the licensee to disciplinary action. Current regulation does not impose a penalty for violation of this section. This change is necessary to ensure that unlicensed individuals are properly supervised and working within the scope specified in this section for protection of the public.

Factual Basis/Rationale: The contents of this section are not organized in an order that is easy to follow. Further, current regulation is silent on the duties of a chiropractor prior to referring the patient to an unlicensed individual for treatment. These changes are necessary for clarity and protection of the public.

**Section 314 is amended:**

Currently, this section requires licensees to report violations of the act or rules and regulations to the Executive Officer, so that the board may take disciplinary action. This section would be amended to include, “and statutes governing the practice of chiropractic” as there are other laws in addition to the act and rules and regulations which guide the practice of chiropractic.

Factual Basis/Rationale: This change is necessary to provide authority for the BCE to discipline a licensee for reports of all laws and regulations governing the practice of chiropractic, if warranted, and ensure protection of the public against chiropractors who violate any laws, rules or regulations governing their scope of practice.

**Section 317.2 is added:**

This section would prohibit a licensee from including provisions in any agreement to settle a civil dispute arising from the licensee’s practice, which would prohibit another party to the agreement from contacting, cooperating with or filing a complaint with the BCE or require them to attempt to withdraw a complaint filed with the BCE. This section further defines a violation of this section as unprofessional conduct and gives the BCE authority to take disciplinary action against a license for such violations.

Factual Basis/Rationale: Business and Professions Code (BPC) Section 2220.7 provides a similar prohibition for physicians. The use of “gag clauses” can delay or thwart the BCE’s effort to investigate alleged cases of misconduct, thereby preventing the BCE from fulfilling its consumer protection mandate. The increasing use of gag clauses to prevent regulatory agencies from investigating licensees is contrary to good public policy and allows unscrupulous or negligent professional licensees to continue to harm the public. This regulation would put consumers first and is necessary to prevent licensees from escaping the professional repercussions of their actions.

**Section 317.3 is added:**

This section would require licensees to report to the BCE the bringing of an indictment or information charging a felony against the licensee; convictions, including any



verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor; and disciplinary action taken by another licensing entity or authority of this state, or another state, or an agency of the federal government. This section further requires the report to be made in writing within 30 days of the date of the bringing of the indictment or charging of a felony, the conviction or disciplinary action and establishes the licensee's failure to report, pursuant to this section, as unprofessional conduct.

Factual Basis/Rationale: BPC Section 802.1 sets forth similar reporting requirements for physicians and surgeons, osteopathic physicians and surgeons, and podiatrists. Currently, the BCE requests this information on the licensee's annual license renewal form and receives subsequent arrest reports from the Department of Justice. This reporting requirement is necessary to ensure the BCE receives full disclosure of a licensee's criminal activity immediately following indictments or charges of criminal activity to allow the BCE to investigate the matter in a more expedient manner in order to protect the public.

**Section 321.1 is added:**

This section would allow the BCE to order an applicant for licensure, who may be unable to safely practice chiropractic due to a mental illness or physical illness, to be examined by one or more physicians and surgeons, chiropractors, or psychologists designated by the board. The full cost of such examination shall be paid by the BCE. Additionally, this section would establish the BCE's authority to render an application incomplete for an applicant's failure to comply with such order or to deny an application if the report of evaluation determines that the applicant is unable to practice chiropractic safely and requires the board to furnish the applicant with a copy of the evaluation report.

Factual Basis/Rationale: Existing law (BPC Section 480) allows the BCE to deny a license on various grounds, including conviction of a crime, commission of any crime involving dishonesty, fraud or deceit or commission of any act which constitutes grounds for suspension or revocation of the license. Currently, the BCE can compel a licensee to submit to a psychological or physical examination when the licensee's fitness to practice is compromised based on suspected mental illness; however, this authority does not apply to applicants for licensure. Although the BCE has the authority to deny an applicant a license for acts defined in BPC Section 480, the board lacks authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the person's fitness to practice is compromised based on suspected mental or physical illness. The proposed language is needed to institute the BCE's authority to require assessment of applicants who may be mentally or physically impaired and deny their application if results of the assessment render them incompetent. The proposed regulation is necessary to protect the public from incompetent chiropractors.

**Section 384.1 is added:**

This section would outline the factors considered by the BCE during a petitioner hearing, and the petition requirements for reinstatement of a license, reduction of penalty, or early termination of probation. This proposal would incorporate the applications for petitioners by reference into the regulation.

Subdivision (a) would establish that a petitioner for Reinstatement or Reduction of Penalty, including Early Termination of Probation, has the burden of demonstrating any rehabilitative or corrective measures taken since the revocation or disciplinary action and that the petitioner has the necessary and current qualifications to engage in the practice of chiropractic within the scope of current law, and accepted standards of practice.

Subdivision (b) would define the factors that the BCE may consider in reaching a determination on the petition. Such factors would include:

1. The violation for which action was taken against the petitioner's license including the type, severity, number and length of violations; whether the violation involved intentional, negligent or unprofessional conduct; actual or potential harm to the public, patients, or others; the length of time since the violation(s) was committed;
2. Prior discipline and criminal actions including the petitioner's compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution; whether the petitioner has been terminated from probation or other lawfully imposed sanction and the petitioner's legal and regulatory history to and since the violation(s);
3. The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;
4. The petitioner's documented rehabilitative efforts including efforts to maintain and/or upgrade professional skills and knowledge through continuing education or other methods; efforts to establish safeguards to prevent repetition of the original violation(s) including changes or modifications in policies, structure, systems, or methods of behavior application to the petitioner's chiropractic practice; service to community or charitable groups; voluntary restitution to those affected by the original violation(s); use of appropriate professional medical or psychotherapeutic treatment; participation in appropriate peer review mechanisms; and participation in professional chiropractic organizations or associations.
5. Assessment of the petitioner's rehabilitative and corrective efforts including whether the efforts relate to the original violation(s); the date the rehabilitative efforts were initiated; the length, time and expense associated with the rehabilitative efforts or corrective actions; the assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the Board, including their description of the petitioner's progress and prognosis of their current ability to practice chiropractic; the petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s) and the nature and status of ongoing and continuing rehabilitation efforts.

Subdivision (c) would provide the Board with authority to consider other appropriate and relevant factors not included in subdivision (b).

Subdivision (d) would advise petitioners that statements introduced at the hearing must be made in person or pursuant to Government Code Section 11514 and all other statements not made in person or pursuant to Government Code Section 11514 must be under oath and will be considered only as administrative hearsay.

Subdivision (e) would incorporate the Petition for Reinstatement of Revoked License form (09PRRRL-Rev. 12/2012) by reference.

Subdivision (f) would incorporate the Petition for Early Termination of Probation form (09PTP-Rev. 12/2012) by reference.

Subdivision (g) would incorporate the Petition for Reduction of Penalty form (09PRP-Rev. 12/2012) by reference.

Factual Basis/Rationale: Section 1000-10(c) of the Business and Professions Code (Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii) provides the BCE with the authority to reissue a license which has been revoked or cancelled at any time after two years following the revocation or cancellation of a license; however, there are no specifications in the Board's laws or regulations regarding the preparation process or factors to consider for petitioner hearings. The board utilizes a "Petition for Reinstatement of Revoked License" form, a Petition for Reduction of Penalty form, and a Petition for Early Termination of Probation form which requests the petitioner to include specific information and documentation to assist the board in determining the petitioner's qualifications to return to practice. The incorporation by reference of these applications is necessary to ensure that the petitioner is aware of the board's expectations when considering petitions at a hearing. The proposed factors are commonly used by other regulatory health care and healing arts boards, as well as regulatory boards outside of the healthcare or healing arts professions for consideration of petitions. These factors would assist the petitioner in outlining their journey to rehabilitation and provide the board members with essential information needed to evaluate the petitioner's rehabilitation efforts and ability to return to the practice of chiropractic safely.

**Section 390.7 is added:**

This section would require any proposed decision or decision that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in Section 729(c) of the BPC, issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, to contain an order of revocation. A proposed decision shall not contain a stay of the revocation.

Factual Basis/Rationale: This language is similar to language which currently exists for physicians (BPC Section 2246), for psychologists (BPC Section 2960.1), for respiratory care therapists (BPC Section 3752.7), for marriage and family therapists (BPC Section 4982.26), and for clinical social workers (BPC Section 4992.33). Additionally, California Code of Regulations Section 316(c) establishes the BCE's authority to take disciplinary action against a licensee for commission of any act of sexual abuse, sexual misconduct, or sexual relations with a patient, client, customer or employee. Under existing law, the BCE can file an accusation to discipline the licensee. However, if the case goes to hearing, the Administrative Law Judge may issue a proposed decision which may or may not include the same discipline sought by the BCE.

Due to the seriousness of sex offenses and the potential threat to consumers that sex offenders pose, the BCE believes that a mandatory penalty of revocation for any act of

sexual contact as defined in BPC Section 729(c) is necessary to protect the public from acts of sexual misconduct by a licensee and may serve as an effective deterrent to licensees for commission of these acts.

### **Section 390.8 is added:**

This section would require the BCE to deny an application for licensure or revoke a license for an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, under federal law, or under a foreign jurisdiction. This section would prohibit the Board from reinstating or reissuing the individual's license, issuing a stay of license or placing the license on probation. This section would not apply to individuals who have been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender or whose duty to register has been formally terminated under law, an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in subdivisions (2) or (3) shall prohibit the Board from exercising its discretion to deny or discipline a license under any other provision of state law. This section would not apply to any administrative adjudication proceeding under Chapter 5 (Commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to the effective date of this regulation. Lastly, this section specifies that a petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding and the prohibition against reinstating a license to an individual who is required to register as a sex offender applies.

Factual Basis/Rationale: Current law gives the BCE authority to take action against a licensee for the commission of sexual abuse, sexual misconduct, or sexual relations with a patient, client, customer or employee. This section broadens the BCE's authority for discipline against applicants and licensees for any act of sexual misconduct with anyone which resulted in a requirement for the individual to register as a sex offender. The proposed language is necessary to establish the BCE's authority to protect the public from registered sex offenders.

Because of the seriousness of sex offenses and the potential threat that sex offenders pose to consumers, the BCE believes it is necessary to establish a mandatory penalty of revocation in any disciplinary matter for chiropractic applicants or licensees who are registered sex offenders.

### Underlying Data:

Board Meeting Minutes – September 20, 2012 - Proposal Approved

### **Economic Impact Assessment:**

This regulatory proposal will have the following effects:

#### Impact on Jobs

The Board has determined that this regulatory proposal would not affect the creation or elimination of jobs within the State of California. This proposal would specifically

define terms in regulation, establish reporting and disclosure requirements, and amend regulations specific to the disciplinary guidelines, applicant requirements and enforcement to increase enforcement authority and access to critical information for use during investigations and improve efficiency in enforcement processes and procedures for enhanced consumer protection.

### Business Impact

This regulation would not have a significant adverse impact on the creation of new businesses or the elimination of existing businesses within California or the expansion of businesses currently doing business in California. This initial determination is based on the following facts or evidence/documents/testimony:

This proposal would primarily impact licensees and applicants who have had discipline taken against them either administratively or criminally. This proposal would further clarify license posting requirements and the scope and supervision of unlicensed individuals working in a chiropractic office.

### Benefits

This regulatory proposal would benefit the health and welfare of California chiropractic consumers by increasing the BCE's enforcement authority and access to critical information for use during investigations and improving efficiency in enforcement and administrative processes.

### Worker Safety

This regulatory proposal does not affect worker safety because it would provide greater enforcement authority and more efficient administrative processes for the BCE in order to protect the welfare of chiropractic patients.

### Environment

This proposal would not affect the state's environment because it would provide greater enforcement authority and more efficient administrative processes for the BCE in order to protect the welfare of chiropractic patients.

### Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

### Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.